tion of any pamphlet or book relating to the conduct of the war or the terms of peace without its previous submission to the censor who may prohibit such publication without the assignment of cause.[11] That is to say that the merest and irresponsible caprice of a junior clerk may actually be the occasion of suppressing a fundamental contribution to our understanding of the war. So ridiculous a proceeding is at least prevented by this decision. It would have to be shown to the Supreme Court that the methods taken to secure the decision were such as to warrant it; and in so vital a thing as freedom of speech one may feel tolerably certain that the methods would be subject to close scrutiny. It has been the habit of past years to sneer rather elaborately at Bills of Rights. It may be suggested that, with the great increase of state activity which is clearly foreshadowed, there was never a time when their value will have been so manifest. The human needs that history has demonstrated to be essential must be put beyond the control of any organ of the state; that, and no more than that, is what we mean today by natural rights.[12] Governmental power is a thing which needs at every stage the most careful regard; and it is only by judicial control in terms of those rights that the path of administration will become also the path of justice.

THE EXTRATERRITORIAL FORCE OF A DECREE BY A COURT OF EQUITY.[1] — Though a court of equity having the person of the defendant before it might conceivably order him to act in any way it might see fit, and punish him for failure to comply with the decree, this power is not under the settled rules of the conflict of laws, pushed to the extent of interfering with the laws or property of a foreign sovereign.

There is no interference, however, where the order is to refrain from action in a foreign jurisdiction by an injunction against either the commission of a foreign tort,[2] or the breach of a contract in foreign territory.[3] But relief in such cases has frequently been denied on the ground of inexpediency.[4] Nor is there a fatal interference where the order calls for affirmative action within the territorial jurisdiction of the court issuing the order, even though compliance therewith may affect a foreign *res*. Thus a court of equity may order the defendant to account for the proceeds of foreign land,[5] or decree the conveyance of land outside its

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[11] REG. 51. *Cf.* London *Nation*, December 8, 1917.

[12] *Cf.* W. WALLACE, LECTURES AND ESSAYS, 213 *ff.*

[1] For former discussions of this problem see 23 HARV. L. REV. 390; and Beale, "The Jurisdiction of Courts over Foreigners," 26 HARV. L. REV. 283, 294.

[2] Alexander *v.* Tolleston Club, 110 Ill. 65; French *v.* Maguire, 55 How. Pr. (N. Y.) 471; Frank *v.* Peyton, 82 Ky. 150.

[3] Western Union Tel. Co. *v.* Pittsburg, C. C. & St. L. Ry., 137 Fed. 435; Schofield *v.* Ry., 43 Ohio St. 571, 3 N. E. 907.

[4] No. Ind. Ry. Co. *v.* Mich. Central Ry., 15 How. (U. S.) 233 (Foreign tort); Delaware L. & W. Ry. Co. *v.* New York S. W. Ry., 12 Misc. (N. Y.) 230 (Breach of contract in foreign territory).

[5] Edwards *v.* Ballard, 14 La. Ann. 362; Sullivan *v.* Kenney, 148 Iowa, 361; 126 N. W. 349.

jurisdiction,[6] provided the law of the *situs* does not require the act of conveyance to be performed within the local jurisdiction.[7] Here, too, relief may be denied on the ground of inexpediency.[8]

But the rule against interfering with a foreign sovereign does preclude a court of equity from ordering affirmative action outside its jurisdiction.[9] Thus there can be no specific performance of a contract performable abroad,[10] and no abatement of a foreign nuisance.[11] An apparent exception to this rule was developed in the Salton Sea cases.[12] There the defendant constructed a canal intake in Mexico, which caused water to accumulate in Arizona and flood the plaintiff's property in that state. The federal court sitting in Arizona, having personal jurisdiction over the defendant, enjoined it from further allowing the water to accumulate to the plaintiff's injury. The decree manifestly called for affirmative action in Mexico as the only practicable means of compliance therewith. But the exception is apparent only, and not real. The decree was negative in form and might conceivably have been carried out by action wholly within Arizona. The circumstances that the only practicable means of compliance was by affirmative action in Mexico ought not be taken to oust the court of jurisdiction, so long as action in Mexico was not absolutely essential.

A real exception, however, is indicated in *Vineyard Land and Stock Co.* v. *Twin Falls Salmon River Land and Water Co.*,[13] recently decided by the United States Circuit Court of Appeals, Ninth Circuit. The case involved the respective rights of the plaintiff and the defendant to water from an interstate stream. The defendant's land was in Nevada, the plaintiff's in Idaho. The court upheld a decree of the United States District Court of Idaho fixing the amount of water to which the defendant was entitled under its senior appropriation, and ordering the defendant to install in its irrigation ditches in Nevada automatic measuring devices, and refrain from using water without such devices. Apart from the question of jurisdiction, the propriety of the decree under the general common law rules as to water rights might well be questioned.[14] But under the Nevada statute [15] regulating water rights, the order was quite proper on its merits as the only effective way of enforcing the statute. Since it is impossible for the defendant to comply with this decree in any way by action in Idaho, the reasoning on which the Salton Sea cases can be explained is not applicable. Here, then, is a case holding that a court of equity may, in order to prevent a domestic tort, order the defendant to take affirmative action in a foreign jurisdiction as the only efficient means of prevention. The objection that the defendant would

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[6] Penn *v.* Lord Baltimore, 1 Ves. Sr. 444; Massie *v.* Watts, 6 Cranch (U. S.), 148.

[7] Waterhause *v.* Stansfield, 10 Hare, 254.

[8] Mariposa *v.* Garrison, 26 How. Pr. (N. Y.) 448.

[9] People *ex rel* Van Dyke *v.* Colo. Central Ry., 42 Fed. 638 (Mandamus to compel operation of foreign railroad denied); Waterhause *v.* Stansfield, note 7, *supra*.

[10] Port Royal Ry. Co. v. Hammond, 58 Ga. 523.

[11] People *v.* Central Ry. Co., 42 N. Y. 283.

[12] 172 Fed. 792. This case is not unsupported by precedent. Miller & Lux *v.* Rickey, 218 U. S. 258.

[13] 245 Fed. 9. See Recent Cases, p. 652.

[14] For the common law rules see WIEL, WATER RIGHTS (3 ed.), §§ 299, 300.

[15] REVISED LAWS OF NEVADA, 1912, § 4675.

have to go outside the jurisdiction of the court to comply with the decree is not fatal, for, as a practical matter, the defendant can install these meters as well by an agent as it could install them personally; indeed, since the defendant is a corporation it would have had to employ the former method, had the decree been by a Nevada court. Nor ought the territorial sovereign of Nevada have a valid objection against interference where the act is necessary efficiently to enforce his own laws. The case represents the culmination of a tendency evinced in the decisions of the federal courts for the past decade to disregard state lines when, in the interest of efficient administration of justice, it is necessary to do so. While the principle is undoubtedly contrary to classical thought on the subject, it should be welcomed by progressive jurists as a wholesome innovation.

The court further upheld an order of the District Court of Idaho giving the plaintiff the right perpetually to go upon the land of the defendant in Nevada for the purpose of inspecting the meters. This is not simply a decree *in personam* affecting a foreign *res*, but a decree *in rem* directed immediately against a *res* outside the jurisdiction of the court, and, therefore, wholly beyond its control. The order is objectionable not merely because there is an interference with a foreign sovereign, but because there is a total lack of power over the object which it seeks to bind.[16] It is quite impossible to support this part of the decree.

INJUNCTIONS IN LABOR DISPUTES. — In the preceding number of this volume the principle of the balancing of interests was discussed in its relation to labor disputes.[1] A recent decision of the Supreme Court raises this question under slightly different conditions.[2] Officers of a labor union were enjoined from approaching the plaintiff's employees whose employment was at will, but who had contracted not to join a union while in the plaintiff's employ. The court decides the case by presenting a dilemma. To unionize the mines the defendant must either induce the plaintiff's employees not to work for him and join the union, or else to join the union while in his employ. Both methods it brands as illegal. In pursuing the former the defendant would be committing an intentional injury to a business relation existing only at will, and would be liable unless he could produce a justification.[3] This is the common procedure of all strikes and the converse of inducing an employer to discharge non-union employees. The *dictum* of the opinion — for the decision goes upon the second point — adopts the policy of those jurisdictions led by Massachusetts which allow no justification but the immediate,

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[16] Such an objective was deemed fatal in the following cases: Proctor *v.* Proctor, 215 Ill. 275, 74 N. E. 145 (Subjection of foreign land to payment of alimony); Carpenter *v.* Strange, 141 U. S. 87, 11 Sup. Ct. Rep. 960 (Invalidation of deed to foreign land); White *v.* White, 7 Gill & Johnson (Md.), 208 (Partition by sale of foreign land).

[1] 31 HARV. L. REV. 482.

[2] Hitchman Coal & Coke Co. *v.* Mitchell. 38 Sup. Ct. Rep. 65. See Recent Cases, p. 657.

[3] For a thorough analysis of the common law on this subject see GELDART, THE PRESENT LAW OF TRADE DISPUTES AND TRADE UNIONS.